CP 1604
3

IN THE HIGH COURT OF JUDICATURE CHHATTISGARH AT BILASPUR

W.P.NO.802/2004

Petitioner : Pritram Sahu S/o late Kartikram Sahu, Aged about 57 years, Sarpanch R/o Gram Panchayat Kopra Block-Fingeshwar, Tah – Rajim, Dist : Raipur-(C.G.)

Versus

Respondents :

1. State of Chhattisgarh Through Secretary Panchayat & Rural Development, DKS Bhawan, Raipur-(C.G.)
2. Joint Director (Administration) Panchayat and Socil Services Raipur-(C.G.)
3. The Collector Raipur-(C.G.)
4. The Sub Divisional Officer, Gariyaband, Dist : Raipur-(C.G.)
5. The Chief Executive Officer, Gram Panchayat, Kopra, Dist : Raipur-(C.G.)
6. Omkar Singh Thakur, Upsarpanch, Gram Panchayat Kopra, Block Fingeshwar, Dist : Raipur-(C.G.,)

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Clerk to A. G. Bilaspur

WRIT PETITION UNDER ARTICLE 226/227 OF THE CONSTITUTION OF INDIA

(92)

XI-HC—78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक WP No. 802/04 सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
	21.12.2004 Shri Anup Mazumdar, counsel for the petitioner. Shri Sumesh Bajaj, Deputy Government Advocate for the State. None present on behalf of respondent Nos.4 & 5. Return on behalf of respondent No.1 to 4 has been filed. Rejoinder on behalf of the petitioner has also been filed. The petitioner has preferred this writ petition under Article 226/227 of the Constitution of India questioning the legality, correctness and propriety of the order dated 1.3.2004 passed by the Secretary, Panchayat & Rural Development, Govt. of C.G., Raipur whereby the Secretary set aside the order dated 10.7.2002 (Annexure P-8) passed by the Commissioner, Raipur. Brief facts leading to filing of this writ petition are that in the year 2000 the petitioner was elected as Sarpanch of Gram Panchayat Kopra, Block Fingeshwar, District Raipur. It appears that a complaint alleging misappropriation of Panchayat fund was lodged against the petitioner by the Up-Sarpanch of Gram Panchayat Kopra. On that complaint a preliminary enquiry was conducted by Panchayat & Social Education Coordinator, Fingeshwar and based on that the Prescribed Authority i.e. Sub Divisional Officer, Gariyabandh initiated the proceedings under Section 40 of the Panchayat Raj Adhiniyam, 1993 (hereinafter referred to as 'Act of 1993') and a show cause dated 17.10.2000 was given to the petitioner, which was replied by the petitioner vide his reply dated 30.10.2000. Thereafter, again a show cause notice dated 15.12.2000 was served on the petitioner, which	

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मामला क्रमांक.....**सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -2-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

was also replied by the petitioner on 22.12.2000. Thereafter, on 27.9.2001 learned S.D.O. vide Annexure P-5 passed the order of removal of the petitioner from the post of Sarpanch of said Gram Panchayat, against which the petitioner has preferred an appeal under Rule 3 of C.G. Panchayat (Appeal & Revision) Rule, 1995 (hereinafter referred to as 'Rules of 1995') before the Collector, Raipur and that appeal was came to be dismissed by the Collector vide order dated 3.1.2002 (Annexure P-7). Aggrieved therewith the petitioner preferred a revision under Rule 5 of Rules of 1995 before the Commissioner, Raipur, who after hearing the parties in the matter passed a detailed order dated 10.7.2002 (Annexure P-8), set aside the orders passed by the Prescribed Authority & the Appellate Authority and remanded back the case to the Prescribed Authority with a direction to conduct a fresh enquiry in accordance with the provisions of Section 40(1) of the Panchayat Raj Adhiniyam, 1993.

It seems that Up-Sarpanch being dissatisfied with the order passed by the Commissioner preferred a second revision before the Secretary, Panchayat & Rural Development, Govt. of C.G., Raipur, who passed the impugned order dated 1.3.2004.

Perusal of Rule 5 of the Rules of 1995 reveals that the State Government, the Commissioner, the Director of Panchayat, the Collector may on its/his own motion or on the application by any party, at any time for the purpose of satisfying itself/himself as to the legality or propriety of any order passed by or as to the regularity of the proceeding of the authority subordinate to it/him call for and

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मामला क्रमांक.....**सन्** 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
	examine the record of any case pending before, or disposed of by, such authority and may pass such order in reference thereto as it/he may think fit. In view of the above provisions, the revision was permissible before the State Government, the Commissioner, the Director of Panchayat and the Collector. In the present case the Commissioner had already exercised the revisional powers, therefore, in my opinion no second revision was permissible before the Secretary. Therefore, only on this count alone the impugned order is liable to be set aside. Even otherwise the order passed by the Commissioner dated 10.7.2002 is an elaborate order in which it has been specifically mentioned that learned S.D.O. passed the order under Section 40 of the Act of 1993 without conducting enquiry as envisaged under Section 40(1) of the Act of 1993, without giving fair opportunity of hearing to the petitioner and in violation of the principle of natural justice. As per finding of learned Commissioner, statements of witnesses were not recorded in accordance with law and even the petitioner was not allowed to adduce evidence. Therefore, learned Commissioner held that since enquiry was not conducted in accordance with Section 40(1) of the Act of 1993, the order passed by the S.D.O. & the Appellate Authority were set aside and matter was remanded back to the Prescribed Authority for conducting the enquiry afresh in accordance with provisions of Section 40 of Act of 1993.	

GKPRJ—FS/78 —9/2000 —50,000.

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मामला क्रमांक ..... **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
	Further clause (b) of Rule 5 envisages that 'an application for revision by any party shall only be entertained if it is on the point of law and not on facts'. In the impugned order learned Secretary has not pointed out any legal flaw in the order passed by the Commissioner. Even it has not been mentioned that what was the illegality in the order passed by the Commissioner. Learned Secretary set aside the Commissioner's order without assigning any reason whatsoever Accordingly, on this count also the impugned order is liable to be set aside In the result, the petition of the petitioner is allowed and the impugned order dated 1.3.2004 passed by the Secretary, Panchayat & Rural Development, Govt. of C.G., Raipur, is hereby set aside and that of the order of Commissioner, Raipur dated 10.7.2002 (Annexure P-8) is restored. With the aforesaid observation and direction, the petition stands disposed of. Consequently, M.W.P. No.726/04 also stands disposed of. **Sd/-** **L.C. Bhadoo** **Judge**	

Rashmi

GR.PRJ—FS/78 — 9/2000 —50,000.

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23.12.04